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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,054	10/01/2003	Tom Evslin	449-115	8096
83336	7590	06/21/2011		
Gilman Pergament LLP 1480 Route 9 North Suite 204 Woodbridge, NJ 07095			EXAMINER AL AUBAIDI, RASHA S	
			ART UNIT	PAPER NUMBER
			2614	
			MAIL DATE	DELIVERY MODE
			06/21/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/677,054

Applicant(s)

EVSLIN, TOM

Examiner

RASHA AL AUBAIDI

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This in response to amendment filed 04/04/2011. No claims have been added. Claim 46 has been canceled. Claims 22, 37, 39 and 44-45 have been amended. Claims 22-45 are still pending in this application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 recites "network communication availability communication", however, it is not clear what the network communication availability communication means.

Claim 22 recites "In a system comprising", then recites "a method of performing", however, it is not clear whether the claim is directed towards system or method. Correction required.

Claim 22 recites the limitation "packet switched data network". Claim 22 recites as well "packet switched network". It is not clear which language is correct? Correction required.

Due to the many 112 2nd paragraph issues that are found in the claim's language (i.e., claim 21), the Examiner is unable to determine the exact and the correct scope of the claim. However, for the purpose of examination, the Examiner believes that the applied prior art is still applicable to the newly amended claim 21.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-23, 28-29, 31, 33, 35-36 and 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwama (US PAT # 6,600,735) in view of Poretsky (US PAT # 6,141,322).

Regarding claims 22 and 35-36, Iwama teaches in Fig. 1 a basic structure of the invention wherein a calling party (105-a) at a PSTN (104-a) initiates a call set up to a called party (105-b) at PSTN (104-b) utilizing internet (110). Iwama also teaches in a

case where a gateway device at a calling side (i.e., a call source), a gateway device at a called side (call destination) and a gate keeper are provided, the calling side gateway device which accepts a call reception from a PSTN assigns a connection condition such as the telephone number of a connection destination, etc. and inquires to the gate keeper. In response to this inquiry, the gate keeper determines the address of a called side gateway device which satisfies the request condition, and notifies it to the calling side gateway device. Subsequently, the calling side gateway device proceeds in the connection of the call to the called side gateway device. When a call setup is accepted between the gateway devices at the calling side and the called side, audio data are transmitted/received according to a protocol for transferring real-time data. Thus, Iwama teaches a three-step procedures, that is, a procedure of **determining** the gateway device of a connection destination, a procedure of connecting a call to the gateway device thus determined and a procedure of transferring real-time information between the gateway devices thus connected are carried out for the call connection (see col. 1, lines 1-50, col. 2, lines 20-25 and lines 29-32).

Iwama does not specifically teach "receiving information on resources status in the second telephony network" and "when said information on resources status indicates that resources are available in said second telephony network to complete setup of the call therein" as recited in the claim's language.

However, Poretsky teaches in a method and apparatus for precedence and preemption in ATM connection admission control FIG. 3 shows the CAC block receives a SETUP message at 30, and based upon the mandatory and optional IEs, reads the necessary resources for a requested virtual circuit connection (VCC) and runs a bandwidth allocation algorithm at 32 to determine at 34 whether the necessary resources are available at the switch. If the bandwidth allocation algorithm determines that the required resources are available, the CAC updates at 36 the allocation database with the new VCC and allocated resources, a traffic contract is agreed to at 38, and the VCC is passed at 40 to the user in a CONNECT message (see col. 2, lines 35-48).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the feature of determining the resources status prior to establishing a call setup connection, as taught by Poretsky, into the teachings of Iwama in order to reduce traffic and not waste anytime attempting to connect or reach an entity or network that is not available. Note that Iwama teaches the use of a separate call signaling protocol (this can read on H.232 protocol, see col. 1, lines 15-18). Also, the claimed use of "interface" is inherent if not obvious within the teachings of Iwama and Poretsky. Also, having the interface receiving the resources status is an obvious limitation and well known in the art. Any designated entity may receive any type of information based on the need and desire. Thus, the Examiner believes that having the "**interface**" at first telephony network in said packet switching network, **receiving**

information on **resources status**" is a design choice of Applicant that does not rise the invention to the level of patentability.

Regarding claim 23, limitations (this reads on the message transmitted between the calling side gateway and the called side gateway (see col. 8, lines 17-22).

For claim 28 limitations, see col. 1, lines 15-18.

For claim 29 limitations, see col. 8, lines 22-35.

Regarding claims 31, 33 and 38 limitations, see col. 8, lines 3-13 and col. 21, lines 29-40.

Claim 43-44 are rejected for the same reasons as discussed above with respect to claims 22 and 37. However, Examiner believes that issuing a confirmation message if the resources are available as recited in claim 43 is an obvious limitation and well known feature in the art of telephony.

Claims 24-27, 30, 32, 34, 37-42 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwama (US PAT # 6,600,735) in view of Poretsky (US PAT # 6,141,322) and further in view of Elliott et al. (US PAT # 6,614,781).

Regarding claims 24 and 30, the combination of Iwama and Poretsky does not specifically teach that "the out of band signaling protocol is SS7", as recited in the claim language.

However, Elliott teaches the use of a SS7 protocol in a voice over data network architecture (see col. 4, lines 30-49).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of an old and well known protocol such as SS7, as taught by Elliott, into the combination of Iwama and Poretsky in order to have faster call set up in addition to efficient use of network resources. Note that SS7 is a tested and reliable signaling protocol with global acceptance.

Claims 37, 39 and 41 are rejected for the same reasons as discussed above with respect to claims 22 and 24, respectively.

For claim 25, Elliott teaches the use of sending IAM (Initial Address Message) see (Fig. 28 and corresponding text.)

For claims 26-27, 32 and 38, Elliott teaches the use of ACM (Answer Complete Message) see Fig. 36 and corresponding text.

For claim 34, the send of a “release message” as recited in the claim language is obvious and well known in the art.

Regarding claim 40, although Elliott teaches that the system includes soft switch sites, gateway sites, a data network, a provisioning component, a network event component and a network management component. The system interfaces with customer facilities (e.g., a PBX), carrier facilities (e.g., a LEC) and legacy signaling networks (e.g., SS7) to handle calls between any combination of on-network and off-network callers (see abstract). However, Elliott does not specifically teach that the SS7 signaling network is arranged in parallel with the data network. However, this limitation is obvious, since arranging the SS7 signaling in any structure (i.e., parallel) can be done based on the need and desire. Having the ss7 signaling in parallel or in another type of arrangement will not change the functionality of the SS7 signaling.

Regarding claim 42, see originating and terminating gateways (102-a) and (102-b) as shown in Fig. 10 of Iwama.

Claims 45-46 are rejected for the same reasons as discussed above with respect to claims 24 and 30, respectively.

Response to Arguments

4. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues (Page 8 of the Remarks) that "Poretsky discloses that the availability of bandwidth of a device is evaluated before sending data through device". Applicant also adds that "However, nothing in Poretsky discloses the feature of claim 43, of 'conducting call setup signaling within the data network only after receiving the resource-availability confirmation message from the second PSTN". The Examiner disagrees with Applicant's argument respectfully because Poretsky is already performing the checks on the bandwidth availability prior to sending any data through the device. The Examiner strongly believes that this is equivalent to what is the Applicant alleging in claim 43 of "conducting call setup signaling within the data network only after receiving the resource-availability confirmation message from the second PSTN". Again, the functionality and the end result is still the same. Logically one of an ordinary skill in the art may check if there are any resources available before conducting a call, a conference, or any other task required. Also, if the prior art is capable of checking the resource availability of a device, then it is possible to check the resource availability of a network or any other element desired.

Applicant also argues (Page 9 of the Remarks) that "At the closest from the Examiner's viewpoint, Poretsky merely teaches to check for the availability of bandwidth in a communication network element (a switch in the case of Poretsky) prior to sending data through that network element". Applicant also adds "However, the feature in Applicant's claims that is missing from Iwama is the process of checking a

distant network for bandwidth availability, to avoid needlessly expending the expense and effort of setting ...". Again, the Examiner disagrees with Applicant's argument respectfully because the Applicant's alleged limitation of **the process of checking a distant network for bandwidth availability** is not found or recited in the claim, which appears that Applicant is reading into the claim's language. Also, in response to Applicants' argument, that the reference does not teach or reasonably suggest this limitation. The Examiner first emphasizes for the record that the claims' language is broad.

In addition, the Applicant has not argued any narrower interpretation of the claim limitations, nor amended the claims significantly enough to construe a narrower meaning to the limitations.

Since the claims breadth allows multiple interpretations and meanings, which are broader than Applicants' disclosure, the Examiner is required to interpret the claim limitations in terms of their broadest reasonable interpretations while determining patentability of the disclosed invention. See MPEP 2111. In other words, the claims must be given their broadest reasonable interpretation consistent with the specification and the interpretation that those skilled in the art would reach. *See In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000), *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999), and *In re American Academy of Science Tech Center*, 2004 WL 1067528 (Fed. Cir. May 13, 2004). Any term that is not clearly defined in the specification must be given its plain meaning as understood by one of ordinary skill in the art. *See* MPEP 2111.01. *See also In re Zletz*, 893 F.2d 319,

321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989), *Sunrace Roots Enter Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003), *Brookhill- Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir.2003).

The interpretation of the claims by their broadest reasonable interpretation reduces the possibility that, once the claims are issued, the claims are interpreted more broadly than justified. See *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). Also, limitations appearing in the specification but not recited in the claim are not read into the claim. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).

Therefore, the failure to significantly narrow definition or scope of the claims and supply arguments commensurate in scope with the claims implies the Applicants intend broad interpretation be given to the claims. The Examiner has interpreted the claims broadly and reiterates the need for the Applicants to distinctly define the claimed invention.

Regarding Applicant's argument (Page 10 of the Remarks) that recites "there is no motivation to combine Poretsky with Iwama", the Examiner would like to bring to Applicant's attention that Iwama did not teach "**receiving information on resources status in the second telephony network**" and "**when said information on resources status indicates that resources are available in said second telephony network to complete setup of the call therein**". Thus, the need to existed to have a prior art (i.e.,

Poretsky) that specifically teaches the most important element missing from the Iwama which are “receives a SETUP message at 30”, runs a bandwidth allocation algorithm at 32 to determine at 34 whether the necessary resources are available at the switch and If the bandwidth allocation algorithm determines that the required resources are available, a traffic contract is agreed to at 38, and the VCC is passed at 40 to the user in a CONNECT message (see col. 2, lines 35-48). Thus, it is became clear that Poretsky steps overcame the deficiency of Iwama and brought the result of reducing traffic and saving on resources by not waste anytime attempting to connect or reach an entity or network that is not available.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rasha S AL-Aubaidi whose telephone number is (571) 272-7481. The examiner can normally be reached on Monday-Friday from 8:30 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on (571) 272-7488.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rasha S. AL-Aubaidi/

Primary Examiner, Art Unit 2614